

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

SKYLER SHELDON,

Plaintiff,

v.

No. 1:23-cv-00813-KWR-KRS

THE UNIVERSITY OF NEW MEXICO,
a public university,
THE UNIVERSITY OF NEW MEXICO
BOARD OF REGENTS,
in their official capacity,
ANGELA CATENA,
in her official capacity,
MICHELLE SANCHEZ,
in her official capacity,
and
BEN ZINKE,
in his official capacity.

Defendants.

PLAINTIFF SHELDON’S FIFTH STATUS REPORT

As directed by the Court, Plaintiff Sheldon files his fifth bi-monthly status report in this matter. *See* Order for Bi-Monthly Status Reports, Dkt. 37. The status of the Title IX proceedings at the University of New Mexico (“UNM”) is as follows:

1. On October 28, 2024, UNM’s Board of Regents reversed the President’s decision to dismiss the Title IX administrative case.
2. That decision failed to address whether UNM ever had jurisdiction to hear the case in the first place, an issue Mr. Sheldon had pressed since the inception of this federal case.

3. On November 1, 2024, Mr. Sheldon asked UNM to reconsider the October 28, 2024, decision and expressly decide whether UNM had jurisdiction to consider the case before analyzing the merits.

4. On January 6, 2025, UNM informed Mr. Sheldon that his request for the Regents to reconsider their decision would not be entertained.

5. In the meantime, UNM set a third Title IX hearing for February 4, 2025.

6. In preparation for that hearing, Mr. Sheldon asked the Hearing Officer to address whether UNM had ever acquired jurisdiction to hold the third Title IX hearing under the Department of Education's grievance procedures set forth under 34 C.F.R. §§ 106.44 & 106.45.

7. The Hearing Officer declined to do so, even though the federal regulations require strict adherence with the Department of Education's grievance rules before holding a Title IX hearing or imposing any sanctions or discipline.

8. Leading up to the February 4, 2025, Title IX hearing, the Hearing Officer, however, decided to allow Mr. Sheldon to present evidence that his DNA had been excluded as a contributor to the evidentiary sample taken from the Complainant's genitalia.

9. That DNA evidentiary sample, however, disclosed that DNA profiles from at least two other unknown males were present on the Complainant's genitalia.

10. The Hearing Officer also allowed Mr. Sheldon to introduce evidence that the SANE nurse had opined that Complainant's alleged injuries were consistent with consensual sex.

11. The Hearing Officer also allowed Mr. Sheldon to introduce evidence that the Complainant was not being truthful with UNM when Complainant told UNM police that the SANE nurse informed Complainant that her case was the worst case of rape the SANE nurse had ever seen.

12. Apparently, the Complainant was unaware that this exculpatory evidence existed, and when Complainant learned about the evidence on January 31, 2025, she asked that the third Title IX hearing set for February 4, 2025, be continued.

13. On February 3, 2025, UNM expressly declined to do continue the hearing.

14. Indeed, the Hearing Office informed the parties that the third Title IX hearing would commence as scheduled at 11 a.m. on February 4, 2025.

15. On February 4, 2025, less than two hours before the third Title IX hearing was scheduled to start, the Hearing Officer vacated the third Title IX hearing “due to continuing attempts to schedule witness participation at the hearing. The Complainant should have the opportunity to review and respond to the new evidence submitted by the Respondent that has been allowed to be presented at the hearing.”

16. The Hearing Office did not explain what witness was unable to be scheduled to participate for the hearing.

17. At this time, UNM is attempting to reschedule the third Title IX hearing even though UNM’s jurisdiction to hold such a hearing has never been established.

Respectfully submitted,

ROTHSTEIN DONATELLI LLP

/s/ Marc M. Lowry

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CERTIFICATE OF SERVICE

I, HEREBY CERTIFY that on the 8th day of February 2025, I filed the forgoing pleading electronically through the Court's CM/ECF System, which cause counsel of record to be served by electronic means.

/s/ Marc M. Lowry

ROTHSTEIN DONATELLI LLP